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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,658	09/29/2003	Robert Bennett	1087.1020	9027
21171	7590	12/02/2005	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			HESS, DOUGLAS A	
			ART UNIT	PAPER NUMBER
			3651	

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,658

Applicant(s)

BENNETT, ROBERT

Examiner

Douglas A. Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

- 5) ☐ Notice of Informal Patent Application (PTO-152)

- 6) ☒ Other: figure 1 of US Pat # 6,102,814

DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of the independent claims (1, 18, 19, 25, 26, 27), the terminology “become stacked together in a standing up configuration as an array of packets” is present. Based on the disclosure and the drawings, it appears the support 5 which is present in each and every drawing and is described and stated in the specification “stacking conveyor 3 is, for example, also provided with supports 5 which prevents packets from lying flat.” (specification page 4, paragraph 18). It appears from the drawings and spec that the support 5 is an integral part of the invention which has not been claimed and which in turn would appear to prevent the claimed invention from functioning as claimed. For example, the examiner interprets a standing up configuration as an array of packets” as a uniform, in order stack of products such as those products shown in the Koehler Patent (US 6,182,814), not the claimed packets of the present application since there is no claimed way of orienting the packets on the conveyor to allow the grippers to form the packets into a standing up array of packets. “Array” is typically defined as an orderly line or arrangement”. Without the support 5 being claimed, it is unclear how the packets will be gripped into the standing up configuration and an orderly line. The packets

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would most likely be pushed together by the grippers in a misaligned unorderedly arrangement which defeats the purpose of the present invention.

Claims 8 and 22 positively recite the packets as part of the claimed invention, which is contradictory to claim 1. The packets do not appear as a structural part or combination of the invention in claim 1, since they are only recited in a functional phrase.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5-9, 12-17, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Koehler (US Pat. No. 6,182,814).

See the attached marked up copy of Koehler figure 1 depicting the claimed features.

Please note the examiner is interpreting gripper 80 as the first gripper, and grippers 70 and 90 as the claimed second gripper.

RE claim 16, Koehler does not positively suggest changing the gripping force in his first and second grippers, but the device is capable of such action as currently claimed. Because Koehler uses second gripper 70 first and then second gripper 90 next, the force during the transition would inherently be changed during the transition.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 18-24, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koehler.

Koehler teaches the claimed invention as outline in above paragraph 4. Koehler fails to teach the use of first and second drive motors. Koehler is vague on his belt drive system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide at least 2 different drives, and possibly even 3 drives (for belts 70, 80, 90) since each of the different sets of grippers are on their own belts and for the versatility of the stacking machine, having different drives on each belt would allow a multitude of options in stacking different products and different numbers of products.

Allowable Subject Matter

7. Claims 10 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas A. Hess whose telephone number is 571-272-6915. The examiner can normally be reached on M-Thurs 5:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on 571-272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Douglas A Hess
Primary Examiner
Art Unit 3651

11-8-05

DAH
November 8, 2005

